

BEFORE THE ST. CHARLES COUNTY COUNCIL  
ST. CHARLES COUNTY, MISSOURI

In the matter of Bill No. 5001 to approve            )  
Conditional Use Permit CUP21-10 for a lawn        ) Bill No 5001  
care service (indoor storage of equipment and        )  
vehicles required) on property owned by            )  
Dardenne Creek Farms, Inc.                            )

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

On October 25, 2021, the St. Charles County Council (“**County Council**”), by an affirmative vote of its majority, passed Bill No. 5001, approving Conditional Use Permit CUP21-10. The Planning and Zoning Commission (“**Commission**”) considered the application for Conditional Use Permit CUP21-10 (“**CUP21-10**”) and on a vote of eight (8) yeas to zero (0) nays decided to recommend it for approval. Pursuant to Section 2.600 of the St. Charles County Charter, an affirmative vote of a majority of the County Council is necessary to pass any bill, unless passing the subject bill would override a negative recommendation of the Commission, in which case, Section 405.510.A of the Ordinances of St. Charles County, Missouri (“**OSCCMo**”) requires the supermajority vote of five (5) Council Members to pass the bill. Because the County Council decided to uphold the positive recommendation from the Commission, only the affirmative vote of a majority of the County Council was necessary to pass Bill No. 5001 approving the CUP21-10.

At the October 25, 2021 meeting, the St. Charles County Council received for its consideration the record as it was stipulated and agreed by and between Jason Abernathy (“**Applicant**”), and Dardenne Creek Farms, Inc. (“**Owner,**” and collectively with Applicant, “**Applicants**”), and St. Charles County Department of Community Development, Planning and Zoning Division (“**Division**”), in that certain Agreement to Stipulate as to the Relevant Facts and the Record and Waiving Formal Hearing, dated October 27, 2021, signed by Applicants and by the Division (“**Stipulation Agreement**”). Said Stipulation Agreement is attached hereto as **EXHIBIT I** and incorporated herein. The record set forth in the Stipulation Agreement constitutes the entire record relied upon by the County Council in making its decision. Having been duly advised in the premises, the County Council hereby makes its Findings of Fact and Conclusions as required by law.

## FINDINGS OF FACT

### APPLICABLE PROVISIONS OF THE UNIFIED DEVELOPMENT ORDINANCE

1. At all times relevant to this decision, St. Charles County has had in effect the Unified Development Ordinance for St. Charles County, Missouri (“**UDO**”), including its zoning regulations codified as Chapter 405 of the OSCCMo.
2. Chapter 405 of the UDO sets out zoning regulations applicable to the unincorporated part of St. Charles County.
3. Section 405.090.C.9 of the UDO provides that in “RR” Single-Family Residential Districts, the category “Lawn care service, on a site of not less than one (1) acre, and all lawn care materials; any related equipment or vehicles are required to be stored within an accessory structure.” is an authorized conditional use.
4. Section 405.510.A of the UDO provides that applications for conditional use permits for uses specifically authorized for consideration in the district use regulations shall be made to the Division, which shall refer the application to the Commission for public hearing. After holding the public hearing, a report and recommendation shall be filed by the Commission with the County Council.
5. Section 405.510.B of the UDO provides,

Before authorizing the issuance of a conditional use permit, the County Council may impose such conditions as will, in the County Council's judgment, ensure that the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger public health, safety, or general welfare; that the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or to the esthetic and/or scenic values of the vicinity, nor substantially diminish and impair property values within the neighborhood; and that the establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

### THE SUBJECT PROPERTY AND ITS ZONING

6. The property subject to the above-captioned conditional use permit application (“**Subject Property**”) is a parcel of land known as 3153 Hopewell Road; is located on the

northwest side of Hopewell Road, approximately 1,000 feet northeast of Tanis Le Lane; and consists of approximately 2.79 acres. (Ex. I.)

7. The Subject Property is within a “RR” Single-Family Residential District. (Ex. I.)

THE CONDITIONAL USE PERMIT APPLICATION AND ITS REVIEW

8. Through the application for CUP21-10 for the Subject Property owned by Dardenne Creek Farms, Inc., the Applicant is seeking to develop a lawn care service with indoor storage of equipment and vehicles required. (Ex. I)
9. On September 15, 2021, the Commission conducted a hearing on that application. (Ex. I.)
10. At that hearing, Mike Price, County Planner for the Division, provided a report for this application and provided the Commission with a recommendation in favor of approval of CUP21-10, subject to the following conditions:

- A. A site plan substantially complying with the attached concept plan and Section 405.525 of the County Code shall be submitted to and approved by the St. Charles County Community Development Department prior to the conditional use becoming active.
- B. No conditional use shall be in active use until such time all conditions of approval have been met.
- C. All related vehicles and equipment, with the exception of employee parking, shall be stored within a structure.
- D. In conformance with the definition of “lawn care service” (Section 405.060 OSCCMo), no landscaping business shall be operated in conjunction with the conditional use permit.
- E. No equipment shall be operated outdoors between the hours of 7:00 p.m. and 6:00 a.m.
- F. Exterior lighting shall utilize full cutoff light fixtures to prevent light pollution from impacting surrounding properties.

(Exh. I)

11. Chairman Ellis asked if the Commission had any questions for County staff. (Ex. I)

12. Commissioner Frahm asked when this property was last rezoned. Mark Price stated that the Ordinance to rezone this property was signed on April 29, 2019, and application was likely made in February or March. (Ex. I)
13. Chairman Ellis asked what the plan for the intersection of Hopewell and Highway N is because there is a dangerous turn involved in this area. Mark Price said that the Highway Department has plans to reduce what is now a sharp 90 degree for Hopewell Road at this location. (Ex. I)
14. Commissioner Cleary what will they do with that spur on Hopewell Road where the fire station is located. Mark Price said he does not know what the plan is. (Ex. I)
15. Elizabeth Lum, representative for the Applicant, 120 S. Central, Ste 700, St. Louis, MO 63105, was sworn in. Elizabeth Lum noted that there were six letters of opposition from neighbors, and she clarified some confusion about the use that is being requested by this application. Ms. Lum made a presentation for the Planning and Zoning Commission regarding CUP21-10. She stated that the proposed use is similar with neighboring businesses and surrounding properties, many of which are the same type of uses, and stated that this use will not have a negative impact on property values. (Ex. I)
16. Chairman Ellis asked the Commission if they had questions for the Applicant. (Ex. I)
17. Commissioner Hollander asked why is this property that was recently rezoned about a year and half ago to two 3-acre lots, it is now being requested to use this property for a lawn care service. Ms. Lum responded that her client was not involved in the rezoning process but is looking to purchase the property from the Owner. She does not know if the current owner is also the owner that rezoned this property. She stated that the property is situated between two landscaping businesses that were already there, and this would add continuity as opposed to construction of two residential homes. (Ex. I)
18. Commissioner Cleary asked why two to three vehicles would need a half-acre of concrete pavement. Ms. Lum stated that she could be off on the number of vehicles that would be stored there, but there would be a few employees coming in every morning to load trucks and leave for their jobs. Commissioner Cleary further questioned with that amount of pavement if some future use is being planned. Ms. Lum responded that she is not aware of any future plans. (Ex. I)
19. Chairman Ellis asked what utilities are available at this site. Mark Price responded that there is a private sewage disposal system, water service is provided by Public Water Supply District #2, and a future sanitary/sewer plant nearby is forthcoming. (Ex. I)

20. Chairman Ellis asked if any equipment maintenance would be done at this site. Ms. Lum responded that they have been told that the site would be used only for storage. Chairman Ellis asked if there would be a fence installed around the site for security reasons. Ms. Lum responded that a fence has not been discussed but can be brought up with the client. (Ex. I)
21. Commissioner Cleary asked if there will be any conditions placed on the septic system to keep from migrating to the floodplain area. Ms. Lum said she would have to defer that to an engineer, although the septic system that is being shown is not in an area within the floodplain. (Ex. I)
22. Chairman Ellis asked staff if the runoff issue could be addressed when the site plan is presented, and Mark Price answered in the affirmative. (Ex. I)
23. Chairman Ellis asked if anyone from the public wished to comment on Application No. CUP21-10. (Ex. I)
24. Arnie C. Dienoff, PO Box 1535, O'Fallon, MO 63366, was sworn in. Mr. Dienoff has several issues with this application in relation to the County's 2030 Master Plan. He noted the area is in a potential residential growth area, and within the realignment area of Hopewell Road and Highway N. He stated that he is not sure this is an ideal place for this business as there is already another lawncare business nearby. He stated that if the Planning and Zoning Commission votes to approve this application, he would like to see additional conditions be added to help protect the neighborhood as a whole. (Ex. I)
25. Chairman Ellis asked if anyone else from the public wished to comment on this application. There being no other speakers, he asked the applicant to come back to the podium. (Ex. I)
26. Chairman Ellis stated that for the record, the salt dome and the rock surfaced area are on the adjoining property, and not on the Subject Property. (Ex. I)
27. Elizabeth Lum stated that they have advised their client of what is permitted or required by the ordinances of St. Charles County. (Ex. I)
28. Chairman Ellis asked if the Commission had any further questions for the Applicant's representative. There being none, he closed the public hearing and brought the application back to the Commission for discussion. (Ex. I)
29. Commissioner Cleary suggested that a condition be added that states that the vehicles on the property must belong to be employees or be related to the business because of the amount of parking that is available. Commissioner Bahr asked Commissioner Cleary what kind of other uses he thought the property could be used for. Commissioner Cleary responded that a half-acre parking lot seems to be a lot of space for three employees and a

- lawn care business. Chairman Ellis stated that all related vehicles and equipment must be stored within a structure, and an employee would not be able to store his boat or recreational vehicle on the property because it would not be a business-related vehicle. (Ex. I)
30. Commissioner Hollander stated that, after looking at the concept plan, he is not sure that this lot would necessarily fit in well if someone tried to sell it as a residential lot and build a home next to the other one. He believes that the proposed use in CUP21-10 would fit in better with the small area of the property. (Ex. I)
  31. Chairman Ellis asked Commissioner Cleary if he wished to amend the staff recommended conditions, and he responded that he did not. (Ex. I)
  32. Commissioner Boehmer asked County staff if Hopewell Road is slated for upcoming road improvements. Mark Price stated that it is slated for improvements in the County's long-range plan, but he doesn't know how far out those improvements would be. Ellie Marr, Senior Planner for the Division, stated that during the site plan review phase, the Highway Department will review and their plan. She further stated that if they need to request a reservation of property for future right-of-way it would be requested at that time. During the concept planning phase, staff made sure the building was set back far enough that those improvements would not interfere with straightening the curve for Hopewell Road. (Ex. I)
  33. Commissioner Cleary asked if the area outside of the improvements were to be needed as right-of-way, would the Applicants be required to install a landscaping barrier? Mark Price responded that they would be required to meet all of the conditions of their site plan approval. Ellie Marr stated that during the site plan review phase, County staff will make sure that everything is in place that the ordinances require. The plan that is before the Planning and Zoning Commission at this juncture is a preliminary concept plan and adjustments can still be made. (Ex. I)
  34. Upon closing the hearing, Chairman Ellis entertained a motion to recommend approval of Application No. CUP21-10 with the six conditions recommended in the County staff memo. Commissioner Frahm made such motion and Commissioner Hollander seconded that motion. The Commission approved that recommendation by a vote of eight (8) ayes to zero (0) nays. (Ex. I)
  35. On October 12, 2021, the County Council introduced Bill No. 5001 to consider the Commission's recommendation to approve the application for CUP21-10. (Ex. I)
  36. At that meeting, Council Chair Elam introduced Robert Myers, Planning and Zoning Division Director for the St. Charles County Community Development Department to provide an overview of the application. Mr. Myers was sworn in by staff. Mr. Myers

explained this CUP application is located at 3153 Hopewell Road and they are requesting a CUP to operate a lawn care service which is defined by County zoning as “A business devoted to cutting grass on private or public property. Such service shall not include materials or equipment used for landscaping.” Mr. Myers pointed out both staff and the Planning and Zoning Commission recommended approval for this CUP application. (Ex. I)

37. Mr. Myers introduced Elizabeth Lum, representative for the Applicant to provide her overview. Ms. Lum was sworn in by staff. Ms. Lum provided a power point presentation with information regarding the application for CUP21-10. The application is for a lawn care service located in a residential zoned district, and that the business must store its vehicles and equipment indoors. Ms. Lum shared various slides of the property and the surrounding neighboring properties which many are involved in conditional use permits for landscaping uses as well as a trucking and delivery service. Ms. Lum stated this property does not require a zoning change to allow for the CUP. Ms. Lum reviewed the site plan and described the various means they will be using to buffer the area with trees and various plantings. Ms. Lum reviewed the requirements according to Section 405.510 of the County’s UDO and stated the Planning and Zoning Commission unanimously approved this CUP application at their September 15, 2021 meeting. (Ex. I )
38. There being no questions from the Council Members, Council Chair Elam opened the floor for Public Comments on Bill No. 5001. (Ex. I )
39. Arnie C. AC Dienoff, County resident, was sworn in by staff. Mr. Dienoff stated he attended the Planning and Zoning Commission meeting and has various concerns with this application as it is in an area that is quickly growing. Mr. Dienoff pointed out there were six letters of opposition provided to the Planning and Zoning Commission members. Mr. Dienoff requested the following conditions: No derelict vehicles; no outdoor maintenance; hours of operation should be 7:00 a.m. to 6:00 p.m.; no outdoor storage; no piles of yard waste, chemicals, etc.; no debris; a buffer zone of 50’ from the adjoining properties; review of the setbacks; compliance with the County’s stormwater and erosion regulations; compliance with County Code; and compliance with the Missouri Dept. of Natural Resources as it relates to chemical handling, pesticides, and salt to avoid damage to creeks. (Ex. I )
40. There were no additional speakers providing public comment on Bill No. 5001. (Ex. I )
41. Council Member Brazil stated the prior owner of the Subject Property used it for a dump truck lot. (Ex. I )

42. Council Member Hollander, as the liaison to the Planning and Zoning Commission, noted that the context of what uses were next door was important and noted that this is a much better use of land. (Ex. I )
43. Council Chair Elam announced public comment and discussion on the matter was closed. (Ex. I )

### **CONCLUSIONS OF LAW**

44. At the October 25, 2021 meeting, the County Council concluded as a matter of law that it had the authority to grant the application for CUP21-10, because, through the six conditions placed on the CUP21-10 the County Council can, as the UDO requires,

...ensure that the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger public health, safety, or general welfare; that the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or to the esthetic and/or scenic values of the vicinity, nor substantially diminish and impair property values within the neighborhood; and that the establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

Section 405.510.B, OSCCMo.

45. Given that the proposed use, as depicted on the concept plan and described in the narrative of such, conforms to the criteria of Section 405.510.B; and given that the specific conditions detailed in Paragraph 10.A through 10.F above, and approved by the Council, shall address land use impacts for neighboring properties; and given that the County zoning limitations, including requiring indoor storage of all equipment and vehicles, and limiting “lawn care services” to those devoted to cutting grass on private or public property and not including materials or equipment used for landscaping in such services, will greatly limit potential land use impacts for neighbors and ensure that the use will not injure the use and enjoyment of nearby properties; therefore, the Council finds that the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger public health, safety, or general welfare; that the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or to the esthetic and/or scenic values of the vicinity, nor substantially diminish and impair property values within the neighborhood; and that the establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.



**DECISION AND ORDER**

On this 8<sup>th</sup> day of November 2021, the St. Charles County Council hereby orders:

1. The County Council's majority vote to approve Bill 5001 at its October 25, 2021 meeting resulted in the application for conditional use permit CUP21-10 being granted.
2. As required by Section 405.511 OSCCMo., the County Council's approval of Bill 5001 and granting of the requested Application CUP21-10 at its October 25, 2021 meeting is hereby documented in these written Findings of Facts and Conclusions of Law.
3. Upon execution by the undersigned, these Findings of Facts and Conclusions of Law are hereby made part of the record and approved by the Governing Body, such approval constituting the Governing Body's final action on the subject of the CUP21-10 Application.
4. The County Registrar shall mail or send certified copies of this Decision and Order to the Applicant and property owners at their record addresses and to the Department of Community Development; and
5. The Department of Community Development is directed to retain its certified copy of this Decision and Order with the records on the application for conditional use permit CUP21-10.

ST. CHARLES COUNTY COUNCIL

By: \_\_\_\_\_  
Mike Elam, Chairperson

ST. CHARLES COUNTY EXECUTIVE

By: \_\_\_\_\_  
Steve Ehlmann, County Executive

ATTEST:

By: \_\_\_\_\_  
Brenda Hinton, County Registrar

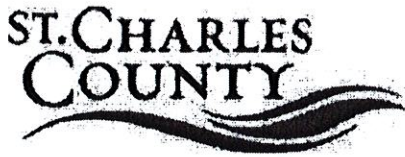
**CERTIFICATE OF SERVICE**

The undersigned certifies that on this \_\_\_\_ day of \_\_\_\_\_, 2021, she mailed or sent certified copies of this Decision and Order to Jason Abernathy at 1944 Duello Road, Lake Saint Louis, MO 63367; to Robert Shatro, Dardenne Creek Farms, Inc., at 3153 Hopewell Road, Wentzville, MO 63385; and to Michael Hurlbert, Director of Community Development, St. Charles County, at 201 North Second Street, St. Charles, Missouri 63301.

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Brenda Hinton, County Registrar

EXHIBIT I



CONDITIONAL USE PERMIT STIPULATION AGREEMENT

BEFORE THE ST. CHARLES COUNTY COUNCIL ST. CHARLES COUNTY, MISSOURI

In the matter of Bill No. 5001 to approve Conditional Use Permit CUP21-10 for a lawn care service (indoor storage of equipment and vehicles required) on property owned by Dardenne Creek Farms Incorporated Bill No. 5001

AGREEMENT TO STIPULATE AS TO THE RELEVANT FACTS AND THE RECORD AND WAIVING FORMAL HEARING

It is stipulated and agreed by and between Jason Abernathy ('Applicant'), Dardenne Creek Farms Incorporated ('Owner'), and St. Charles County Department of Community Development, Planning and Zoning Division ('Division'), that the relevant facts, as set forth in the documents and additional audio and video recordings listed below, may be considered by the County Governing Body to be true.

- Conditional Use Permit Application
• Division Staff Recommendation to the P&Z Commission
• Property Description
• Photos of the Site
• Concept Plan
• Number of Letters in support 0
• Number of Letter with concerns 0
• Number of Letters in opposition 6
• Minutes from the P&Z Commission meeting on September 15, 2021
• Year 2030 Master Plan for St. Charles County, Missouri
• The Unified Development Ordinance of St. Charles County, Missouri
• Recommendation from the P&Z Commission
• Video Recording of the P&Z Commission meeting on September 15, 2021
• All testimony received during the public comment session of the County Council meeting on October 12, 2021 where the Bill was introduced, as documented in the video recording of the meeting.
• Meeting presentation from the applicant's representative on September 15, 2021

It is further stipulated and agreed that the record for consideration by the County Governing Body include only the materials listed above, that copies of these materials be admitted into evidence as if

EXHIBIT I

Bill 5001 to approve Conditional Use Permit CUP21-10, pg. 2

originals, and that said record be admitted into evidence before the County Governing Body without objection by either party.

All evidence admissible by this stipulation shall have the same force and effect as if it were admitted by specific ruling of the County Governing Body pursuant to the formal rules of evidence and may be used by the Governing Body in making findings of fact to the same extent as any other properly admitted evidence.

It is further stipulated and agreed by and between the parties to the above-entitled matter that, notwithstanding the right to a formal hearing under Section 405.511 of the Ordinances of St. Charles County, Missouri, such formal hearing shall be and is waived and the matter shall proceed to the County Governing Body for final decision on the record as stipulated herein.

IN WITNESS WHEREOF, the Parties have executed this Stipulation Agreement as of the date last written below:

**St. Charles County Department of Community Development, Planning and Zoning Division ("Division")**

Signature By: [Signature]

Printed Name: MICHAEL HUALBERT

Title: DIRECTOR, COMMUNITY DEVELOPMENT

Date: 10-27-2021

Attest: [Signature]

**Jason Abernathy ("Applicant")**

Signature By: [Signature]

Printed Name: JASON E. ABERNATHY

Title: OWNER

Date: 10-26-21

Attest: [Signature]

**Dardenne Creek Farms Incorporated ("Owner")**

Signature By: [Signature]

Printed Name: Robert A Shatro

Title: President

Date: 10-27-21

Attest: [Signature]